

APPEAL NO. 041562
FILED AUGUST 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 24, 2004. With respect to the single issue before him, the hearing officer determined that there is no correct impairment rating (IR) and that the case is returned to the Texas Workers' Compensation Commission (Commission) for the appointment of a second designated doctor who shall determine the respondent's (claimant) IR. The appellant (carrier) appealed, agreeing that the Commission-appointed designated doctor failed to properly apply the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000), but that the hearing officer erred in failing to adopt the five percent IR certified by its required medical examination doctor. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

On appeal, the carrier argues the invalidity of Commission Advisory 2003-10, signed July 22, 2003, and 2003-10B, signed February 25, 2004. We have addressed this argument in prior Appeals Panel decisions, and decline the carrier's offer to revisit our position on the same. See Texas Workers' Compensation Commission Appeal No. 032402-s, decided November 3, 2003. The carrier next asserts that even if the advisories were valid, they would not apply to the facts of this case because presurgery flexion and extension x-rays were taken. As the hearing officer properly pointed out in his decision, these presurgery x-rays may very well have been taken, however the results of those x-rays were not placed into evidence and the doctor who concluded that the x-rays showed no loss of motion segment integrity did not provide the measurements which led to his conclusion.

We have reviewed the complained-of determination and conclude that the disputed issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We likewise perceive no legal error.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge